ment to buy a certain number of scales, which were made in various styles at different prices, was held valid in *Kimball Bros.* v. *Deere, Wells & Co.*, 108 Ia. 676. A contract to sell 750 tons of salt bound the seller, although the buyer had the privilege of choosing from various goods at different prices per ton in *Mebius & Drescher Co.* v. *Mills*, 150 Cal. 229. A contract to saw out and sell from 500,000 to 1,000,000 feet of lumber was binding, although the price per thousand depended on the kind of timber, and the probable amount or proportion of each kind was uncertain, in *American Hardwood Lumber Company* v. *Dent*, 164 Mo. App. 442. The point of indefiniteness does not seem to have been raised in *Alden* v. *Kaiser*, (Minn. 1913) 140 N. W. 343, where the agreement was to buy five automobiles, to be ordered from different priced models and styles. The problem of ascertaining the damage is met by assuming that the party with the privilege of selection would have chosen the goods on which the other party would have made the least profit. *George Delker Co.* v. *Hess, supra; Kimball Bros.* v. *Deere, supra; American Hardwood Co.* v. *Dent, supra.* There is, however, a *dictum* that the latter party may exercise the option for the purpose of estimating the damages, and make the contract for the goods on which he would have made the greatest profit. *Mebius & Drescher Co.* v. *Mills, supra.*

TRIAL—THE EFFECT OF INCONSISTENT SPECIAL FINDINGS.—Plaintiff sued for injuries sustained while he was engaged in unloading slabs of marble for the defendants. He alleged that the defendants were negligent in failing to provide a sufficient force of men to handle the marble. The jury returned a general verdict for the plaintiff, and made a number of special findings. One of the special findings as to the defendant's negligence was inconsistent with other special findings, and with the general verdict. The court *held* that a new trial should have been granted. *Willis* v. *Skinner et al.* (Kan. 1913) 130 Pac. 673.

When special findings are inconsistent with each other, of course no judgment can be rendered on them, and the trial judge must either render judgment on the general verdict, or grant a new trial. The cases are in conflict as to which he should do. In Colorado it has been held that "contradictory and inconsistent special findings destroy each other, and the general verdict stands." *Drake* v. *Justice Gold Mining Co.*, 32 Colo. 259, 75 Pac. 912. Indiana takes the same view. *Shuck* v. *State*, 136 Ind. 63, 35 N. E. 993; *Hereth* v. *Hereth*, 100 Ind. 35; *Dickel* v. *Shirk*, 128 Ind. 178, 27 N. E. 733; *C. & E. I. Rr. Co.* v. *Ostrander*, 116 Ind. 259, 15 N. E. 227; *Byram* v. *Galbraith*, 75 Ind. 134. There is *dictum* in Michigan and in Iowa to the same effect. *Burke* v. *Bay City Traction & Electric Co.*, 147 Mich. 172, 110 N. W. 524; *Foster* v. *Gaffield*, 34 Mich. 356; *Fishbaugh* v. *Spunaugle*, 118 Iowa, 337, 92 N. W. 58. A contrary rule is well established in Kansas, and it is there held that where special findings are inconsistent a new trial should be granted. *St. L. & S. F. Ry. Co.* v. *Bricker*, 61 Kan. 224, 59 Pac. 268; *Latshaw* v. *Moore*, 53 Kan. 234, 36 Pac. 342. It would seem that the Kansas rule is the more logical. The court in the principal case, in applying that rule, said of inconsistent special findings, that they "leave the matter in such uncertainty

that in effect it is still undetermined whether or not the plaintiff ought to recover." Moreover, the existence of inconsistent special findings tends strongly to show that the jury did not understand the case. 2 THOMPSON, TRIALS, § 2692.

WILLS—BARRING OF ESTATES TAIL BY DEED.—A testator devised certain described real estate to his daughter "absolutely" and if she died without "living issue" then over to the testator's brother. A few years after the testator's death the daughter conveyed the land to complainant, who later contracted to sell the property to defendant, and to convey "a good fee simple title;" defendant refused to accept the deed of conveyance when tendered on the ground that a fee simple could not be conveyed by complainant. *Held,* that the fee tail was barred by the daughter's deed of conveyance and became a fee simple absolute in the grantee. *Schneer* v. *Greenbaum,* (Del. 1913) 86 Atl. 107.

The Delaware Statutes provide that a fee tail could be converted into a fee simple by a deed of conveyance. For discussion of the principles applicable to the barring of estates tail see 11 MICH. L. REV. 534.

WITNESSES—PRIVILEGE—SELF-CRIMINATION.—Defendants, officers of an insolvent banking corporation, were ordered to deliver to the Bank Commissioner certain papers, books and property pertaining to the business of the bank. Defendants refused on the ground that the books might contain information which would tend to incriminate said defendants and to render them liable to criminal proceedings. *Held,* that this answer was insufficient. *Burnett et al.* v. *State,* (Okla. 1913) 129 Pac. 1110.

In view of the fact that the Oklahoma court deemed the records and papers of the bank to be public records the following principle enunciated by Justice HUGHES in the case of *Wilson* v. *United States,* 221 U. S. 361, which is strongly relied upon in the instant case, is pertinent, "Thus, in the case of public records and official documents, made or kept in the administration of public office, the fact of actual possession or of lawful custody would not justify the officer in resisting inspection, even though the record was made by himself, and would supply the evidence of his criminal dereliction. If he has embezzled the public moneys and falsified the public accounts, he cannot seal his official records and withhold them from the prosecuting authorities on a plea of constitutional privilege against self-crimination. The principle applies, not only to public documents in public offices, but also to records required by law to be kept, in order that there may be suitable information of transactions which are the appropriate subjects of governmental regulation and the enforcement of restrictions validly established. There the privilege, which exists as to private papers, cannot be maintained." See also *Manning* v. *Mercantile Securities Co.,* 242 Ill. 584, 30 L. R. A. N. S. 725 and note. *Boyd* v. *United States,* 116 U. S. 616; WIGMORE, EVIDENCE, § 2259.